

ORDINANCE No. \_\_\_\_\_, SERIES 2010

**AN ORDINANCE DENYING THE REQUESTED CHANGE IN CHANGING THE ZONING FROM R-6, MULTI-FAMILY RESIDENTIAL TO C-1, COMMERCIAL ON PROPERTY LOCATED AT 3145-R, 3147, 3151, 3153 AND 3155 SOUTH 3RD STREET, CONTAINING 0.66 ACRES, AND BEING IN LOUISVILLE METRO (CASE No. 12897)(AS AMENDED).**

**SPONSORED BY: COUNCILMAN JON ACKERSON AND COUNCILWOMAN MARIANNE BUTLER**

WHEREAS, the Legislative Council of the Louisville/Jefferson County Metro Government (the "Council") has considered the evidence presented at the public hearing held by the Louisville Metro Planning Commission and the recommendations of the Commission and its staff as set out in the minutes and records of the Planning Commission in Case No. 12897; and,

WHEREAS, the Council has reviewed the record made by the ~~concurs in and adopts the findings of the~~ Planning Commission for the zoning change in Case No. 12897 and made findings and conclusions that differ from those forwarded by the ~~approves and accepts the recommendations of the~~ Planning Commission ~~as set out in said minutes and records; and,~~

WHEREAS, the Council has found that, based on the record made by the Planning Commission in Case No. 12897, that the proposed change in zoning is not supported by the adopted comprehensive plan, Cornerstone 2020, and that the current zone is appropriate and the proposed zone is inappropriate based on the following findings of fact, and

WHEREAS, the Council finds that the proposal fails to comply with the adopted comprehensive plan, Cornerstone 2020, and particularly Community Form/Land Use Guideline 1, Community Form, and specifically Policy B.2, which anticipates that revitalization and reinforcement of the Traditional Neighborhood Zoning District, in which the subject property is located, will require particular emphasis on the preservation and renovation of existing buildings in stable neighborhoods, and the development proposed will not preserve or renovate existing residential buildings on the property in question, though the subject property is located in a stable neighborhood, as evidenced by active neighborhood associations, including Wilder Park

and Oakdale, both of which participated at the Planning Commission's public hearing on this proposal and gave testimony regarding the gentrification of the neighborhood and the importance of maintaining existing housing stock and boundaries between the commercial core and residential areas, and the fact that private developers and the University of Louisville have made substantial investments in the neighborhood with new sports facilities and retail opportunities built on former industrial sites, and,

WHEREAS, the Council further finds that the proposal fails to comply with Community Form/Land Use Policy B.2, because the proposal contemplates the extension of the commercial core beyond the boundary created by Central Station Boulevard into the residential area to the south, which will destabilize the 3100-block of South 3<sup>rd</sup> Street through the removal of four viable residential structures, and will lead to further replacement of historic and character-defining housing stock with commercial development, and the preservation of this existing character is especially critical to the area given the fact that this section of South 3<sup>rd</sup> Street is the gateway to Southern Parkway, an Olmsted Parkway, and past Wayside Park, an Olmsted park, and creates a gateway to the neighborhood, and,

WHEREAS, the Council further finds that the proposal fails to comply with Community Form/Land Use Guideline 2, Centers, and specifically Policy A.4, which states that a compact form of development should be encouraged in activity centers to promote efficient land use and infrastructure patterns because, though the proposed development is located adjacent to the activity center at the Central Station Development, the Central Station Development is connected to the core commercial area along South 3<sup>rd</sup> Street to the north of Central Avenue, as well as to the University of Louisville's facilities to the north, and the proposed development expands that activity center to the southwest and encroaches into the existing residential area rather than incorporating itself into the existing commercial core and promotes further expansion of the activity center since the proposed development crosses the natural boundary created by Central Station Boulevard into the 3100 block of South 3<sup>rd</sup> Street, and,

WHEREAS, the Council further finds that the proposal fails to comply with Policy A.4, described above, because though the Central Station Development also represented an expansion of the existing activity center located along South 3<sup>rd</sup> Street, the Central Station Development was built on the site of the former American Air Filter industrial complex and though a small number of residential structures were removed as part of that development, the removal of those homes facilitated the redevelopment of a brownfield property connected to the main commercial core into a large-scale commercial development featuring a variety of neighborhood-serving uses, and did not represent a true encroachment into the residential areas to the south of Central Station Boulevard, which was constructed before the Central Station development, and the proposed development will encroach into a purely residential block of South 3<sup>rd</sup> Street and remove existing housing stock from the community that is contiguous with the remainder of the 3100 block and contributes to the fabric of the neighborhood; and,

WHEREAS, the Council finds that the proposal fails to comply with Community Form/Land Use Guideline 2, Centers, Policies A.8 and A.11, which encourage centers in the Traditional Neighborhood Form District where they are designed to minimize impact on adjacent residential properties, because though the site design viewed independently from the adjoining properties does comply in many respects with the requirements of the Land Development Code, the transition provided between the proposed development and the residences to the south does not meet the minimum requirements of the Land Development Code, as evidenced by the waiver that was requested to decrease the required landscape buffer from 15 feet to 5 feet at this location, and is therefore insufficient to buffer those properties from the proposed commercial use and specifically from the parking area which faces the adjacent residential structure to the south, despite the fact that there will be a fence and landscaping installed in the smaller buffer, and this transition defines the relationship between the proposed commercial zoning district and adjoining residential uses and should be more carefully planned, and,

WHEREAS, the Council further finds that the proposal fails to comply with Policies A.8 and A.11 as described in the previous paragraph because the introduction of a non-residential zoning classification to the 3100 block of South 3<sup>rd</sup> Street constitutes linear expansion of the existing commercial corridor to the south, which is not supported by Cornerstone 2020, and because in crossing the physical and visual boundary created by Central Station Boulevard the new presence of nonresidential zoning on the 3100 block of South 3<sup>rd</sup> Street will tend to support further linear commercial development of the commercial corridor, and,

WHEREAS, the Council finds that the proposal fails to comply with Community Form/Land Use Guideline 2, Centers, Policy A.15, which encourages the provision of parking in activity centers to balance safety, traffic, pedestrian, environmental and aesthetic considerations because the proposed parking lot is immediately adjacent to the nearest residential structure to the south along South 3<sup>rd</sup> Street and the development contemplates only a 5-foot-wide buffer between this residence and the proposed parking lot, and given the fact that the adjacent residence is located on or approximately on the common property line, this buffer will be inadequate to buffer the residence from the parking lot and associated vehicular traffic even with the proposed fence and landscaping; and,

WHEREAS, the Council finds that the proposal fails to comply with Community Form/Land Use Guideline 3, Compatibility, Policy A.4, which discourages non-residential expansion into residential areas unless it can be demonstrated that adverse impacts such as traffic, parking, signs, lighting and noise can be mitigated through the use of a transition appropriate to the form district, because the proposed development inappropriately expands an existing activity center across the natural boundary created by Central Station Boulevard, leaving only a five-foot buffer between its parking lot and the closest residential structure, and does not propose additional landscaping or buffering beyond what is required by the Land Development Code, or the use of a transitional zoning classification, such as office-residential,

between the residentially-zoned land to the south and the proposed C-1, Commercial development, and,

WHEREAS, the Council further finds that the proposal fails to comply with Policy A.4 as described above because, though the applicant stated that it is appropriate to demolish the existing four residential structures on the subject property because they have deteriorated and are in need of renovation that, in the applicant's view, and possibly under the applicant's ownership, will not be made, the Council finds that the applicant's unwillingness to provide the necessary repairs does not justify a change in zoning, which carries with it a new set of property rights and use entitlements, particularly when the comprehensive plan specifically discourages, and this Council believes this proposal represents, the unmitigated linear expansion of nonresidential use into existing residential areas as is explained more fully above, and,

WHEREAS, the Council understands that the condition of the existing structures is governed by the Property Maintenance Code and that if this Code is violated by the applicant, there is an enforcement process in place to require correction of these violations, and that this issue is entirely separate and distinct from the question of whether the proposal to rezone the subject property complies with the comprehensive plan or meets another statutory standard permitting the Council to grant the requested change in zoning, and,

WHEREAS, the Council finds that the proposal fails to comply with Community Form/Land Use Guideline 3, Compatibility, Policies A.21, A.22 and A.23 which consider the provision of appropriate transitions and buffers between uses that are substantially different in scale and intensity or density of development through techniques such as landscaped buffer yards, berms, compatible building design and materials, or height and setback restrictions, because though the proposed development will use compatible building materials, it features an 8,085-square-foot structure within 60 feet of the nearest residence, which is substantially smaller than the proposed building, a parking lot located within 5 feet of the nearest residence and no mitigation above and beyond the minimum standards required by the Land Development

Code to offset the impact of the requested dimensional and design relief, and therefore does not provide an appropriate transition between the commercial development proposed and the existing adjacent residential development, and,

WHEREAS, the Council finds that the proposal fails to comply with Community Form/Land Use Guideline 3, Compatibility, Policy A.24, which supports the sensitive design of parking, loading and delivery areas adjacent to residential areas and encourages the minimization of adverse impacts from these areas as they relate to nearby residents and pedestrians because the proposed loading area is immediately adjacent to the intersection of Central Station Boulevard and South 2<sup>nd</sup> Street and within 60 feet of the nearest residential structure, and though the applicant proposes to limit delivery times and prohibit trucks from idling during unloading operations, the close proximity of the loading area to the sidewalk and adjacent residential structures suggests that there will be inevitable conflict with pedestrians walking down Central Station Boulevard, since delivery vehicles will use this entrance to access the site, and great potential for adverse impacts on residents to the south due to difficulties in enforcement of voluntary limitations on truck idling such as were proposed by the applicant, and because the proposed parking lot is located only five feet away from the nearest residential structure and no additional mitigation beyond what is required by the Land Development Code is proposed to offset this significant deviation from the required 15-foot buffer, and,

WHEREAS, the Council finds that the current zoning of the subject property is appropriate because it respects the residential character of the 3100 block of South 3<sup>rd</sup> Street and recognizes that this block forms the gateway into the Southern Parkway corridor leading from the Wilder Park neighborhood to Iroquois Park, and because the current zoning is consistent with the current character of the area, which includes a commercial core to the north of Central Station Boulevard, including the former industrial property to the east along South 2<sup>nd</sup> Street and north of Scanlon Street, and commercial development to the south of Central Station Boulevard would allow inappropriate expansion of this commercial activity center,

**NOW THEREFORE BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:**

**Section I:** That the property located at 3145-R, 3147, 3151, 3153 and 3155 South 3rd Street, containing 0.66 acres, and being in Louisville Metro, more particularly described in the minutes and records of the Planning Commission in Case No. 12897 shall remain zoned ~~is hereby changed from R-6, Multi-Family Residential to C-1, Commercial, as more particularly specified in the minutes and records of the Planning Commission, provided, however, said property shall be subject to the binding elements as set forth in the minutes of the Planning Commission in Case No. 12897.~~

**Section II:** This Ordinance shall take effect upon passage and approval.

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Kathleen J. Herron  
Metro Council Clerk

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Thomas L. Owen  
President of the Council

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Jerry Abramson  
Mayor

Approved: \_\_\_\_\_  
Date

**APPROVED AS TO FORM AND LEGALITY:**

Michael J. O'Connell  
Jefferson County Attorney

By: \_\_\_\_\_